

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 KEITH RANIERE AND ALLISON MACK,

7 Defendants.

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8 18-CR-204 (NGG)

United States Courthouse
Brooklyn, New York

June 12, 2018
2:00 p.m.

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10 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
11 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
12 UNITED STATES SENIOR DISTRICT JUDGE

13 APPEARANCES

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1 THE COURT: Please be seated in the back.

2 THE COURTROOM DEPUTY: Criminal cause for status
3 conference. Counsel, please state your appearances.

4 MS. PENZA: Moira Kim Penza for the United States.

5 Good afternoon, Your Honor. With me at counsel table are AUSA
6 Tanya Hajjar and Karin Orenstein. And with Your Honor's
7 permission, Samantha Fry, who is an intern with our office who
8 is currently attending Harvard Law School.

9 THE COURT: Very good. Thank you.

10 MS. PENZA: Thank you, Your Honor.

11 THE COURT: Please be seated.

12 Yes.

13 MR. AGNIFILO: Good afternoon, Your Honor, Marc
14 Agnifilo, Teny Geragos and with Your Honor's permission we
15 have an intern with us, Sophia Agnifilo. We represent
16 Mr. Raniere. And we also have co-counsel.

17 MR. DEROHANNESIAN: Paul DerOhannessian and Danielle
18 R. Smith.

19 THE COURT: Okay. Where does she go to law school?

20 MR. AGNIFILO: She's still in undergrad, Your Honor.

21 THE COURT: Undergrad. Welcome. Yes.

22 MR. BUCKLEY: Good afternoon, Your Honor, Sean
23 Buckley and William McGovern of Kobre Kim on behalf of
24 Ms. Mack, who is seated at counsel table as well.

25 THE COURT: Please be seated everyone. Thank you

1 and welcome.

2 At this point I'd like to hear from the government
3 as to the status of the pretrial developments.

4 MS. PENZA: Thank you, Your Honor.

5 Your Honor, the government has been providing
6 discovery on an ongoing basis. We -- as we represented
7 originally, there is a significant amount of discovery in this
8 case. We have recently received additional discovery. We
9 intend to make a further production this week and we expect
10 that it will still be ongoing for some period of time. We
11 just received, for example, two email accounts, Your Honor,
12 that we believe will contain, at the very least, Rule 16
13 evidence to be provided to the defendants and we're going to
14 do that as expeditiously as possible.

15 We also, as we expressed to Your Honor, there are at
16 least -- there is at least one account where we have firewall
17 concerns and we have set up a firewall team. We have an FBI
18 agent and an AUSA who are assigned to that and they will be
19 reviewing materials quickly so we can produce those as well.

20 THE COURT: Now, I set a trial date of October 1st,
21 when will you be done with your discovery transfers to the
22 defendants?

23 MS. PENZA: Your Honor, it is difficult for us to
24 estimate right now because we are still in the process of
25 receiving certain materials. We do intend to do it on a

1 rolling basis. As we did tell Your Honor earlier, we do
2 expect -- at our last status conference, we do expect a
3 superseding indictment in this case and that there will be
4 additional discovery obligations in accordance with the
5 superseding indictment as well.

6 THE COURT: So this would be a superseding
7 indictment as to these defendants?

8 MS. PENZA: As to these defendants -- as to these
9 defendants, yes.

10 THE COURT: And what about the issue of any
11 additional defendants that might come along and whether we
12 would be having one trial or more than one trial in this case?

13 MS. PENZA: Your Honor, at this time, based on our
14 ongoing investigation and the charges that we do expect to
15 bring in the superseding indictment, which we have made
16 representations to at least Mr. Agnifilo on the phone earlier
17 this week, that we expect to do that within the next month and
18 a half, we would be seeking -- the government would expect
19 that the defendants that we seek to charge would be tried at
20 the same time based on the charges that we anticipate
21 bringing.

22 THE COURT: So let me just understand this in terms
23 of scoping out my schedule and not to put you in a corner, but
24 believe it or not this is not my only case, so are we talking
25 about a trial of a week, a month --

1 MS. PENZA: Your Honor, we anticipate --

2 THE COURT: -- three months?

3 MS. PENZA: We anticipate it would be more in the
4 range of three months.

5 THE COURT: A three-month trial. That's including
6 the defense?

7 MS. PENZA: Yes.

8 THE COURT: All right. Let me hear from the
9 defense.

10 MR. AGNIFILO: Thank you, Your Honor.

11 Our concern, and maybe it's not first and foremost,
12 our concern is if new defendants are added a month and a half,
13 two months from now, and if it's the government's position
14 they want to have one trial rather than multiple trials, I can
15 imagine the scenario where a defense lawyer coming into this
16 case and a defendant coming into this case for the first time
17 in say August, says an October 1st trial date is not possible
18 for him or her, and then the date gets moved or it does not,
19 that's up to Your Honor. And so it's related to a couple of
20 things, not the least of which is our bail application, and I
21 can do that whenever Your Honor is ready for me to do that.

22 THE COURT: Well, I was trying to ascertain whether
23 I should set a motion schedule at this point and what it
24 appears is that because you haven't received all of the
25 discovery, it would be very difficult for you to agree to a

1 motion schedule if we establish a motion schedule where we
2 don't yet know how much work is going to be involved on your
3 part in making such a motion, and facing -- working back from
4 an October 1st trial date. As a practical matter, if there's
5 a superseding indictment and that superseding indictment
6 includes other defendants, it's going to restart the clock
7 anyway and then there's the question of if some of the people
8 indicted are potentially cooperators, there are all kinds of
9 issues here. This is a more complicated case than your garden
10 variety felon in possession case, for instance, or even a
11 larceny case or any of those. So what I'm trying to get a
12 sense of is whether what we're really talking about in terms
13 of timing, and it's actually I think premature to set a motion
14 schedule.

15 Last time, with all due respect to the government,
16 they said it would be four to six weeks or something like that
17 and we would have a superseding indictment. I thought it was
18 scheduled today, a meeting for today we'd have a better
19 understanding what the timing would be for a trial, but now
20 that's been pushed back and we're talking about July or
21 August, right?

22 MS. PENZA: Yes, Your Honor.

23 THE COURT: Right. So what I think I ought to do is
24 make a schedule such that we have a status conference in July
25 and we see where we are. And if we have to go ahead with just

1 a trial of two people on October 1st, you can hurry up and
2 make your motions at that point.

3 Does that sound reasonable?

4 MR. AGNIFILO: That's good for us, yes.

5 THE COURT: I know it's good for you.

6 MR. AGNIFILO: I agree.

7 THE COURT: I think you would agree with that. And
8 the government, what it does to the government is it tells the
9 government that they have to move with alacrity to deal with
10 any additional potential defendants in the case so that we
11 have a better sense of how many people I would be trying and
12 then we can figure out when I'm going to try them.

13 There's one time we're not trying this case, the
14 month of December there is not going to be a trial because
15 it's not fair to jurors. So I just don't do December -- I've
16 learned after 18 years that I don't conduct long trials with a
17 two-week break for Christmas and New Year's and Hanukkah and
18 Kwanza, I've got everything covered now, and so it would have
19 to be after the first of the year, which is the winter, which
20 brings other issues along the way, but there's also the
21 question of should any of the defendants remain in custody,
22 then there's that concern as well.

23 MR. AGNIFILO: Understood.

24 THE COURT: It's also a concern for someone who is
25 on house arrest. It's not pleasant, even though it's at home

1 it is still not pleasant and I understand all of that and
2 there is a presumption of innocence which we have to recognize
3 and appreciate.

4 So why don't we set a schedule for the next meeting.
5 But before we do, let me hear from Ms. Mack's counsel.

6 MR. BUCKLEY: Thank you, Your Honor. We have
7 nothing to add to Your Honor's assessment and agree with it in
8 all respects.

9 THE COURT: All right. Thank you. So we need to do
10 something late in July.

11 MS. PENZA: Yes, Your Honor.

12 THE COURT: How about Wednesday, July 25th?

13 MR. AGNIFILO: That's fine, Your Honor.

14 THE COURT: Is that okay for Ms. Mack's counsel?

15 MR. BUCKLEY: Yes, Your Honor.

16 MS. PENZA: That's fine for the government, Your
17 Honor.

18 THE COURT: We'll do that at 2 p.m. on Wednesday,
19 July 25th.

20 And you have an application?

21 MS. PENZA: Yes, Your Honor. In light of the
22 ongoing trial process, we would like to exclude time in order
23 to allow the preparation for trial. I do not -- I don't know
24 Ms. Mack's current position. Last time Ms. Mack's position
25 was that she wanted to waive Speedy Trial to continue to

1 engage in plea negotiations. At this time the government is
2 still willing to engage in such plea negotiations, but we have
3 not heard from defense counsel.

4 THE COURT: Let's start with Ms. Mack's counsel.

5 Does Ms. Mack's counsel consent to the exclusion of
6 time?

7 MR. BUCKLEY: Your Honor, we have no objection to
8 the exclusion. We understand that additional discovery is
9 forthcoming as soon as this week, so we have no objection
10 because we need the additional time to review discovery and
11 consider motions.

12 THE COURT: Mr. Agnifilo.

13 MR. AGNIFILO: We do not consent to the exclusion.

14 THE COURT: All right. Under the statute, the time
15 is excluded as Ms. Mack's counsel has not objected to the
16 exclusion of time between now and July 25th. The time is
17 excluded between today and July 25th, 2018, in the interest of
18 justice for the continuation of discovery delivery and plea
19 negotiations.

20 MS. PENZA: Thank you, Your Honor.

21 THE COURT: So that brings us to the next issue.

22 MR. AGNIFILO: Yes, Your Honor.

23 Your Honor, we've given the Court a fairly length
24 written submission, the government has responded, we replied.
25 I think given the circumstances of this case, a reasonable and

1 appropriate set of bail conditions would be to have
2 Mr. Raniere released on a 10 million-dollar bond; he would be
3 secured by, at a minimum of two armed security professionals
4 with TorchStone, and we have the former director of the U.S.
5 Secret Service is sitting in the second row, third from the
6 right, Mark Sullivan, who would be working with torch -- there
7 he is, he has his hand up in the air, Judge. Who would be
8 working with TorchStone as part of the security detail.

9 Let me put a few things --

10 THE COURT: I'm really curious about this concept
11 that someone would be on house arrest basically guarded by
12 people with guns. What is the purpose of having armed guards?
13 Is the purpose of having armed guards that in case the
14 individual being guarded tries to flee, they have the
15 authority to stop him or her and possibly use their guns to
16 stop the defendant? In other words, to shoot and kill
17 somebody, which sounds absurd to me frankly on its face, or is
18 it to stop people from coming in, like reporters or people who
19 feel wronged by the individual, and then protect the
20 individual by shooting the intruder. What is the purpose of
21 an armed guard?

22 MR. AGNIFILO: Sure. So to Your Honor's first
23 question, it is my understanding of the state of the law that
24 someone can consent to physical force being used on him or her
25 but cannot legally consent to deadly physical force being used

1 on him or her. So we would consent to physical -- let me --

2 THE COURT: So then you need a couple of Karate
3 experts, you don't need someone with a gun.

4 MR. AGNIFILO: If I were more imaginative I would
5 have led with that. So the idea really at the end of the day
6 is it's an emphasis on trust rather than arms. And it's a
7 matter of integrity, it's a matter of reputation. The last
8 thing, frankly, I want, the last thing that TorchStone wants,
9 Mr. Sullivan wants is for this to go in the wrong direction,
10 because that's -- we'd have to come back in front of Your
11 Honor and nobody wants to be in that position. So the guns
12 are, I don't know, the icing on the cake. What really keeps
13 him there is there are guards -- let me back up. This goes to
14 Your Honor might have been wondering why I structured the bail
15 application the way I did and there's a reason.

16 There is a trust, a defense trust that has been
17 created since the inception of this case. It's being
18 administered by a trustee. The trustee has a lawyer and no
19 defense costs -- and I say this because the renting of the
20 apartment, the paying of the armed guards would be defense
21 costs which could not be paid unless it were ordered by Your
22 Honor. So the guard, just to be clear, the guards and the
23 apartment would be paid from this irrevocable trust that's
24 been created. Right now there is no apartment because there's
25 no bail condition authorizing the expenditure of money on an

1 apartment. So the idea is this --

2 THE COURT: I'm like the co-trustee if I agree to
3 this.

4 MR. AGNIFILO: I --

5 THE COURT: It's a condition precedent to the
6 expenditure of the funds that the Court agree to something of
7 this nature.

8 MR. AGNIFILO: It ends up being that, but it's not
9 that by design. It's that because they can't spend anything
10 unless it's a reasonable defense cost and it's not currently,
11 as we sit here today, a reasonable defense cost because it's
12 not been ordered.

13 THE COURT: Well, I'm not aware of the trustee's
14 name, I'm not aware of who the settlors are of the trust, I'm
15 not aware of the funds that are in the trust, but put all that
16 aside, this is not your client's money.

17 MR. AGNIFILO: Correct.

18 THE COURT: No one is coming forward to be a -- to
19 sign on this bail application, right?

20 MR. AGNIFILO: The way it's currently situated,
21 that's correct.

22 THE COURT: Right. The purpose of having
23 individuals act in that capacity is that they place some moral
24 suasion on the defendant to adhere to the terms of the
25 release. But there is no one to do that in this case, the way

1 you have structured it.

2 MR. AGNIFILO: That's correct.

3 THE COURT: I'm only talking about your concept.

4 MR. AGNIFILO: Yes.

5 THE COURT: This is a concept.

6 MR. AGNIFILO: That's right.

7 THE COURT: And so someone can write a check for a
8 large sum of money, take a million dollars just out of air
9 here, put it into an irrevocable trust and that trust could be
10 used for the purposes that you have outlined, but there's no
11 moral suasion placed upon the defendant to adhere to the terms
12 of the bail because, frankly, he has nothing to lose. The
13 only people who have something to lose are the settlors of the
14 trust and perhaps the trustee for some fiduciary misbehavior,
15 if that should happen, but there's nothing really that keeps
16 the defendant in tow in effect or -- he has no family members
17 who are going to sign the bond, he's just -- it's just him.

18 And so the question then becomes, assuming that we
19 go forward with something like this, how does -- apart from
20 the fact that there is money available, how does this
21 guarantee that your client doesn't get on an airplane at
22 Teterboro Airport without any kind of travel documentation and
23 fly on a private plane to a place where he gets off the plane
24 and nobody knows where he is, the flight plan changed in
25 mid-flight, that happens, and he's gone? And then the only

1 thing that's out there is the bond company, which has to pay
2 \$10 million because he absconded.

3 MR. AGNIFILO: There is two things: First,
4 Mr. Sullivan and the other agents of TorchStone aren't going
5 to let him do that. They're not going to let him leave.

6 Now, I think to Your Honor's other question, the
7 rules of engagement, as I understand it -- and it's a direct
8 question, I want to give Your Honor a direct answer -- I don't
9 believe they've been authorized to shoot him unless it were an
10 independently dangerous situation. It's a complicated
11 analysis and probably not one that I'm able to make. But
12 that's what -- we have very experienced former law enforcement
13 personnel who are putting their reputations on the line and
14 rather than moral suasion, we have guards. Moral suasion is
15 usually the thing that's compelling in these courtrooms for
16 bringing something back. Here we have something that's more
17 immediate and more compelling, I submit, which is that we have
18 actual guards, at least two of them depending on the location,
19 who are not going to let him leave and who, if there was any
20 inkling of him trying to leave or do anything inappropriate
21 whatsoever in violation of Your Honor's condition, would
22 immediately tell anybody Your Honor wanted us to tell,
23 including the prosecutors, including pretrial, including the
24 Court if the Court wanted to be involved in that. Anybody
25 Your Honor wanted us to tell they're going to tell. This is

1 not the kind of thing where anybody is going to want that to
2 happen.

3 My job in this case is if the case goes to trial, I
4 try the case. The guard's job is to make sure Mr. Raniere is
5 safe, secure, that he comes back to court each and every time
6 he has to come back to court through the end of this
7 proceeding. So what we lack in moral suasion, and Your Honor
8 is right about that, I think we more than make up for in armed
9 personnel who are going to secure an apartment that, not that
10 Mr. Raniere chooses, that they choose. We're happy to have
11 pretrial services or anyone from the government or the FBI
12 involved in that process. We're not trying to keep anybody
13 out.

14 And the benefits really are these, and I think this
15 is a significant one. We have a very, appropriately so,
16 restrictive protective order in this case. I think it is
17 easier, it's safer, it's more secure to review discovery not
18 in a prison setting and to prepare a defense in a fairly
19 complicated case, and a complicated case where there might be
20 superseding indictments into the future and we all know the
21 government is continuing to investigate, not in a prison
22 setting.

23 And here while it's a little, admittedly, unorthodox
24 the way we structured the bond package, I think it's very
25 effective. He won't have his passport, he can't apply for new

1 passports and he's going to be watched by guards with a GPS
2 monitor. So there really are belts and suspenders on this
3 one. He can't leave because Pretrial Services will have a GPS
4 monitor on his ankle. He can't leave because he doesn't have
5 a passport to leave and he can't leave because he has armed
6 guards who are former very high level law enforcement
7 officials whose own credibility -- and I mean that's really at
8 the end of the day I think, you know, a form of moral suasion
9 and not on the defendant but on the integrity of the process.
10 The last thing these guys are going to want to have to happen
11 is Keith Raniere sneaks out behind their back. That would be
12 a disaster for them professionally. It would be a disaster
13 for me professionally, I'll say that in front of Your Honor.
14 Nobody wants that to happen, that would be horrible.

15 And I have every reason to expect that he's going to
16 come back to court, he's going to fight this case. I don't
17 want to get too much into the merits of the case, I think it's
18 a triable case, it's an interesting case, it's a serious case
19 and it's a triable case.

20 THE COURT: What about the situation with him going
21 down to, what was it, Puerto Vallarta --

22 MR. AGNIFILO: Mexico.

23 THE COURT: -- Mexico and staying in a gated
24 community and operating an email account with the protection
25 that he couldn't be -- he couldn't be checked as to his email.

1 MR. AGNIFILO: So I think for better or worse --

2 THE COURT: Why? Why would you do that if you were
3 not trying to evade law enforcement?

4 MR. AGNIFILO: Because there are two, in what I've
5 seen, well-entrenched, passionate factions having nothing to
6 do with law enforcement that surround Mr. Raniere. There are
7 people in Nxivm and in DOS, some of whom are very loyal to
8 Mr. Raniere, and there are people who have left Nxivm and/or
9 DOS who are, from what I've seen, equally passionate
10 anti-Raniere folks.

11 And I don't tend to reference the press in Court
12 matters, but I think it's interesting to note, I think The New
13 York Times magazine piece the journalist noted people were
14 taking photographs of her and others at different points in
15 time. So there's no reason to think -- and I can go through
16 the details of Mexico, there is no reason to think Mr. Raniere
17 was evading law enforcement. I think he was trying to remain
18 secure in the face of people who I don't think mean him well.
19 And that's certainly his belief and that's the belief of some
20 other people. I don't besmirch these people, they are
21 entitled to their views. But Your Honor asked why would he do
22 that and I think that's the reason.

23 The reason more pointedly, and I know the government
24 was concerned about his trip to Mexico, the mother of his
25 child's visa was about to expire and they traveled to Mexico

1 and when they traveled to Mexico -- we have this in our
2 written submission --

3 THE COURT: But they are not living in Puerto
4 Vallarta, they are living five hours away somewhere.

5 MR. AGNIFILO: I think you're right, I don't think
6 they're in Puerto Vallarta.

7 THE COURT: He's in one place and they are more than
8 down the road, they are in another area of the country.

9 MR. AGNIFILO: I can double check, I thought they
10 were all together. Just give me one second, Your Honor.

11 MS. PENZA: Your Honor, at the time of the
12 defendants apprehension in Mexico the mother of his child I
13 believe was in Monterrey, while the defendant was in the
14 Puerto Vallarta area with DOS slaves.

15 THE COURT: With who?

16 MS. PENZA: With DOS slaves including his
17 co-defendant, Ms. Mack.

18 THE COURT: Oh, you called them DOS slaves, I see.
19 All right.

20 MR. AGNIFILO: So --

21 THE COURT: So, look, I understand that your
22 presentation, very extensive, clear presentation, I'm
23 concerned about the fact that what could happen is that you've
24 got these law enforcement people, who retired, who are in this
25 organization, this company, and if he has people who are mad

1 at him then everybody is at risk because he's at risk. If
2 these people come after him and then you've got people
3 protecting him with guns. This is not your ordinary bail
4 application, you understand that.

5 MR. AGNIFILO: I do, I do. But I don't think
6 there's any reason to think that anyone is going to resort to
7 violence.

8 THE COURT: No.

9 MR. AGNIFILO: We haven't had that. This group, and
10 what I mean by the group sometimes it was one group, and then
11 people left, are much more in to trying to figure out who is
12 speaking to who and what they are saying. I mean, they are
13 much more likely to try and hack into -- I'm not suggesting
14 any of this, I'm just saying what I think the reasonable fear
15 would be, they are trying to hack into different
16 communications rather than hurt someone. I don't think
17 there's -- I have not seen any evidence of anyone trying to
18 hurt anyone and so we don't have that problem under our
19 situation because he's not going to have any Internet access.
20 If Your Honor permits him to have a computer on site, it's not
21 going to be hooked up to the Internet. We're going to
22 basically stick a disk in it and go through the government's
23 discovery to the extent that we can. So I don't think we're
24 setting up a situation where we're going to have violence. I
25 think we're just setting up a situation where he is more able

1 to defend himself, easier for his lawyers to see him, easier
2 for his lawyers to spend time with him and spend time going
3 through the extensive discovery that we've gotten and will be
4 getting on the computer and preparing this case for trial. I
5 mean --

6 THE COURT: All right.

7 MR. AGNIFILO: Thank you, Judge.

8 THE COURT: Is there anything you would like to say
9 about any of this, ma'am?

10 MS. PENZA: Your Honor, only if you have any
11 questions, I believe our submission was fairly extensive.

12 THE COURT: Well, you're concerned about the fact
13 that we don't know where this money is coming from and the
14 fact that people who have private jets can fly people wherever
15 they want to fly them and they don't necessarily have to have
16 travel documentation in order to do that, and we really don't
17 know whether in effect we're setting up a private jail here,
18 and does the Court have to start taking into account the fact
19 that what the Court may be sanctioning is in effect a private
20 jail with all the accoutrements of a mansion perhaps. People
21 with a great deal of money can set up a private jail with all
22 kinds of amenities, then it sort of makes a mockery of the
23 system of justice, while other people can't get a hundred
24 dollars together to get out of Rikers Island.

25 I think this is a really big problem. It's not just

1 a social problem, it's a criminal justice problem and I don't
2 know that I want contribute to it unless I know who is
3 providing the money and how much we're talking about. If it's
4 going to be a hundred thousand dollars a month for private
5 gun-toting guards and placement in some sort of a home that I
6 don't know the nature of, then I'm a little bit concerned
7 about it, even apart from the issue of the possibility of
8 flight.

9 I'm concentrating on flight, but I think that if we
10 get past the issue of flight and we move on to some of these
11 other issues, I know that some courts have addressed these
12 other issues, I'd prefer not to have to do that, but does the
13 government have a position on all of that?

14 MS. PENZA: Yes, Your Honor. So, Your Honor, the
15 government absolutely believes that the private jail concept
16 has inherent problems, but this case in particular is a case
17 where it clearly is not the right outcome. The only cases in
18 which this type of private jail has been allowed, which does
19 have enormous policy implications, have been cases in white
20 collar criminal cases where the defendants themselves were
21 putting up enormous sums of their own money. And in this
22 situation, Your Honor, the defense counsel has given his best
23 guess as to who is financing the trust in this case --

24 THE COURT: You mean he's given a guess?

25 MS. PENZA: Yes, Your Honor.

1 THE COURT: He doesn't know.

2 MS. PENZA: He doesn't know.

3 THE COURT: Let's put it this way, he hasn't
4 indicated that he knows.

5 MS. PENZA: He hasn't indicated that he knows. He
6 has indicated who he believes may be funding the trust.

7 MR. AGNIFILO: I -- it's better that I guess. I
8 mean, I don't know in that I've never seen the trust
9 documentation, but, you know, I'm -- I'm --

10 THE COURT: When a surety comes in here I get to
11 question the surety. I get to say, what is your relationship?
12 How do you know this person? What's in it for you? Are you
13 going to be able to cast moral suasion on this individual to
14 guarantee that this person is going to come back? I get to do
15 that.

16 What your structure or the structure that's been
17 sort of devised eliminates is the role of the Court in making
18 a fair judgment as to whether if, by releasing someone,
19 they're likely to show up again in court absent, you know,
20 gunfire. So I'm just concerned about that as much as I'm
21 concerned about anything else.

22 MR. AGNIFILO: Just so Your Honor -- I didn't want
23 to interrupt the prosecutor.

24 THE COURT: Continue.

25 MR. AGNIFILO: Go ahead.

1 MS. PENZA: So, Your Honor, the person who the
2 government believes, based on Mr. Agnifilo's guess --

3 THE COURT: We've all guessed. We've all read the
4 article in The New York Times magazine, all right. I made a
5 promise in my life never to finish any article in The New York
6 Times magazine because they're all too long, but I made an
7 exception regarding this article. I read the whole thing, so
8 I've read everything that was put forward there.

9 MS. PENZA: All the way to my shoes, Your Honor.

10 THE COURT: That's all I know about this case is
11 what I read in The New York Times magazine and the Albany
12 Times Union. Okay?

13 MS. PENZA: Understood, Your Honor.

14 THE COURT: So that's the extent of my
15 understanding. And so based on that, I could reach certain
16 guesses.

17 MS. PENZA: Okay, so, Your Honor, based on that
18 guess, this is a person who the government does believe has
19 acted as a co-conspirator in criminal activity with the
20 defendant.

21 THE COURT: Who has?

22 MS. PENZA: The person who is funding this trust --

23 THE COURT: Yes.

24 MS. PENZA: -- has acted as a co-conspirator of the
25 defendant over many years. And given that, and in addition to

1 the fact that over years she has given -- when we're talking
2 about amounts of money --

3 THE COURT: He or she.

4 MS. PENZA: Yes, Your Honor. He or -- this person
5 on one occasion, just to give Your Honor an example, provided
6 a 65 million-dollar loan to the defendant for the commodities
7 market, which then all of that money was lost and has never
8 been repaid. So this is the type of amounts of money. It is
9 really unimaginable wealth and limitless wealth that we're
10 talking about here. So the idea that any amount of money
11 would not be worth it to this person to allow the defendant to
12 flee, should we end up in that situation, is unimaginable.

13 And she -- this person, is also somebody who, Your
14 Honor, is equally capable along with the defendant of trying
15 to live off the grid. We're talking about people with private
16 islands, talking about people with access to private air
17 travel, which the defendant has participated in. People who
18 have also been using encrypted email. People who have also
19 been dropping their phones so that the government is unable to
20 track them. So this is the environment we're operating in,
21 Your Honor, and so we do believe that the risk of flight is
22 significant in this case. But, Your Honor, we also believe
23 that this, unlike many cases in which private jails have been
24 proposed, is a case where there is real danger to witnesses,
25 to victims if the defendant is released.

1 This is somebody who has a network operating around
2 the world that literally one text message he can mobilize
3 hundreds of people who could do his bidding and so that, with
4 all due respect to Mr. Sullivan, there is nothing that
5 Mr. Sullivan is going to be able to do on a day in, day out
6 basis to prevent something like that from happening, Your
7 Honor, and people are truly petrified of the defendant. This
8 is an organization that has operated for years by manipulating
9 people, by abusing people and by intimidating them.

10 THE COURT: Anything else before I rule?

11 MR. AGNIFILO: Yes. So we have spoken about this
12 and Your Honor's right, Your Honor's suspicion of who is
13 funding the trust, whether that's a hundred percent or
14 99.5 percent, that's exactly what it is.

15 THE COURT: My suspicion is not a suspicion, I'm
16 just saying that in the ordinary course sureties come before
17 the Court and explain what their relationship is with a
18 defendant and attempt to give the Court some assurance that as
19 a surety they are doing so voluntarily, that they have a
20 relationship, that they will do everything they can to oversee
21 the defendant's behavior to the extent that the defendant will
22 return to court, and provide that sort of assurance or group
23 of assurances so the Court can feel that there is a strong
24 likelihood that the person will not abscond, among other
25 things.

1 MR. AGNIFILO: I understand. I understand the
2 Court's concern completely. I can absolutely attempt to make
3 that happen. I don't control this person, this person has her
4 own lawyers, but Your Honor's concern is very well taken by
5 me. I hear the Court loud and clear and if that's something
6 that --

7 THE COURT: But then there is this other issue
8 that's raised obliquely by the government that this supposed
9 financial backer of this irrevocable trust may be either an
10 unindicted co-conspirator or subsequently an indicted
11 co-conspirator with the defendant, where are we then? That
12 complicates the analysis substantially it would seem to me.

13 MR. AGNIFILO: It would complicate it in one regard,
14 I don't think there's any suggestion that this person's
15 money -- we know who we're talking about and her money is
16 inherited, is not ill-gotten gains, so I don't think there is
17 a fear that --

18 THE COURT: I'm not talking about money that -- this
19 isn't an organized crime case, all right, where the money was
20 the result of illegal activity, I would assume based on what's
21 believed by everybody in this room as to the source, but there
22 is the issue of the fact that if one party, one defendant is
23 supporting another defendant financially, then that raises
24 other issues, wouldn't you say?

25 MR. AGNIFILO: I agree. I agree. But as we sit

1 here today, there has been no charge --

2 THE COURT: Right.

3 MR. AGNIFILO: And --

4 THE COURT: Okay.

5 MR. AGNIFILO: -- the money is clean money.

6 THE COURT: I understand.

7 MR. AGNIFILO: I understand.

8 THE COURT: I'm just putting that on the table for
9 you to chew on it.

10 MR. AGNIFILO: I appreciate that. I am chewing.

11 THE COURT: Good. Anything else? That's it?

12 MR. AGNIFILO: That's it for me.

13 THE COURT: All right. The defendant, Keith
14 Raniere, has been charged with sex trafficking, conspiracy to
15 commit sex trafficking, and conspiracy to cause another to
16 engage in forced labor. The defendant has moved for release
17 on bail pending trial. The Court finds that the government
18 has shown that the defendant is a flight risk, notwithstanding
19 the proposed conditions. The Court, therefore, denies the
20 defendant's motion without prejudice.

21 Pretrial detainees have a right to bail under both
22 the Eighth Amendment and the Bail Reform Act. The latter
23 provides that a court must release a defendant, quote, subject
24 to the least restrictive further condition, or a combination
25 of conditions, that it determines will reasonably assure the

1 appearance of the person as required, the safety of other
2 persons, and the community, end quote. Only if, after
3 considering the factors set forth in Title 18 United States
4 Code Section 1342(g), the Court determines that, quote, no
5 condition or combination of conditions will reasonably assure
6 the appearance of the person as required and the safety of any
7 other person and the community, end quote, may the order --
8 the Court order the defendant to be held without bail. If,
9 however, there is probable cause to find that the defendant
10 committed one of the offenses enumerated by the Bail Reform
11 Act, a rebuttable presumption arises, quote, that no condition
12 or combination of conditions will reasonably assure, end
13 quote, the defendant's appearance or the safety of the
14 community or others. In such a case, quote, the defendant
15 bears a limited burden of production to rebut that presumption
16 by coming forward with evidence that he does not pose a danger
17 to the community or a risk of flight, end quote. *United*
18 *States v. English*, 629 F.3d. 311, Second Circuit, 2011.

19 If the defendant offers such evidence, the
20 presumption favoring detention does not fall away, but, quote,
21 remains a factor to be considered among those weighed by the
22 district court, end quote. Even if such a presumption case,
23 however, quote, the government retains the ultimate burden of
24 persuasion by clear and convincing evidence that the defendant
25 presents a danger to the community, and by the lesser standard

1 of preponderance of the evidence that the defendant presents a
2 risk of flight, end quote. Quoting *United States v. English*.

3 The parties agree that this is a presumption case;
4 isn't that right?

5 MR. AGNIFILO: That's correct, Judge.

6 THE COURT: Right?

7 MS. PENZA: Yes, Your Honor.

8 THE COURT: The defendant has been indicted by a
9 federal grand jury on sex trafficking and sex-trafficking
10 conspiracy charges for which the maximum sentence is life in
11 prison. The grand jury's indictment conclusively establishes
12 that there is probable cause to believe that the defendant
13 committed these offenses. The only questions before the
14 Court, then, are whether the defendant has rebutted the
15 presumption in favor of detention, quote, by coming forward
16 with evidence that he does not pose a danger to the community
17 or a risk of flight, end quote. Quoting, again the *English*
18 case, and whether the government has shown that the defendant
19 is dangerous or a flight risk notwithstanding the proposed
20 conditions.

21 The defendant has presented the Court with a bail
22 package that includes a number of conditions of release.
23 These proposed conditions include a 10 million-dollar
24 appearance bond; travel restrictions; home detention enforced
25 by GPS monitoring and round-the-clock armed guards; and

1 restrictions on defendant's access to computers and phones and
2 contact with his co-defendant, alleged co-conspirators, and
3 other Nxivm affiliates.

4 The government contends that this bail package is
5 insufficient to reasonably assure the defendant's appearance
6 at trial, to protect the safety of the community, or to
7 mitigate the risk that he will obstruct justice.

8 After considering the four Section 3142(g) factors,
9 the Court agrees with the government that the proposed bail
10 package is inadequate to reasonably assure the defendant's
11 appearance at trial. In the Court's view, all four of these
12 factors, the nature and circumstances of the offense charged,
13 the weight of the evidence against the defendant, the history
14 and characteristics of the defendant, and the nature and
15 seriousness of the danger to any person or the community that
16 would be posed by the defendant's release, weigh in favor of
17 continued detention. As the Court will explain, the first and
18 third of these factors particularly support continued
19 detention.

20 First, as to the nature and circumstances of the
21 offenses charged, the Court notes that the charges on which
22 the defendant has been indicted are extremely serious. The
23 sex trafficking and sex-trafficking conspiracy charges are
24 each punishable by a sentence of life imprisonment, and the
25 forced labor conspiracy charge is punishable by up to 20 years

1 imprisonment. Because the defendant is charged with sex
2 trafficking by, quote, force, threat of force, fraud, or
3 coercion, end quote, the substantive sex trafficking charge is
4 also subject to a 15-year minimum sentence under Title 18
5 United States Code Section 1591(b)(1). Faced with the
6 possibility that, if convicted, he may spend the rest of his
7 life in prison, the defendant clearly has, quote, a strong
8 motive to flee, end quote. *United States v. Sabhnani*, 493
9 F.3d 63, Second Circuit, 2007.

10 Second, as to the defendant's history and
11 characteristics, the Court finds that this factor strongly
12 supports detention to avoid the risk of flight. Certain
13 aspects of the defendant's history and characteristics support
14 his pretrial release. He is a long-time resident of upstate
15 New York, and there is no indication that he has a criminal
16 record, a substance abuse problem, or a history of missed
17 court appearances. The Court is troubled, however, that
18 defendant's conduct in recent months, his lack of an ordinary
19 job or personal financial resources that could secure a
20 meaningful bond, and his access to third parties' extensive
21 financial resources all show that he may flee if given the
22 opportunity.

23 The Court is troubled by indications in the record
24 that the defendant attempted to allude law enforcement by
25 moving to Mexico last fall. According to the government,

1 once, quote, law enforcement began interviewing witnesses
2 about defendant's criminal conduct, end quote, he fled to
3 Puerto Vallarta, Mexico, where he lived in a luxury villa,
4 began using fully encrypted email, and stopped using his
5 phone.

6 In response, defendant argues that he traveled to
7 Mexico to be with his child and his child's mother, a Mexican
8 citizen whose U.S. visa expired last October. While he admits
9 he used different phones and email addresses, he contends that
10 he did so not to evade law enforcement but to evade
11 anti-Nxivm -- an anti-Nxivm group that he says harassed him
12 for years.

13 Finally, defendant contends that the government was
14 or should have been aware of his location because he filed a
15 document in state court resigning as executor of the estate of
16 his deceased significant other. That document identified by
17 name and location the Mexican notary before whom defendant
18 appeared, which he argues shows that authorities knew his
19 location.

20 Defendant's explanations are not persuasive. Even
21 if the Court were to accept defendant's explanation for why he
22 traveled to Mexico, this explanation would not give the
23 Court -- I'm sorry, would still give the Court pause as it
24 would indicate that the defendant has close personal ties to
25 Mexico and thus may be a flight risk. In any event, this

1 explanation rings false, as defendant's motion indicates that
2 the mother of his child lives in or near Monterrey, but
3 Monterrey is hundreds of miles from Puerto Vallarta. The
4 Court is skeptical of defendant's explanation that he began
5 using fully encrypted email and stopped using his phone to
6 evade Nxivm critics, not law enforcement, as the Court is not
7 aware how the former could have the ability to track his
8 phone. Nor is the Court persuaded by defendant's argument
9 that his filing of the executorship document in state court
10 indicates that he did not attempt to conceal his location from
11 the government. The document states that the Mexican notary
12 before whom he appeared was located in Guadalajara, Jalisco.
13 According to Google Maps, Guadalajara is about a five-hour
14 drive from Puerto Vallarta. The Court does not see how the
15 government should have inferred this location from this
16 document.

17 The Court also has grave concerns about the
18 defendant's financial resources. According to defendant's
19 financial affidavit, he is self-employed and has no income and
20 no assets other than a 50 percent interest in a home in
21 Clifton Park, New York, worth approximately \$60,000. He thus
22 has nothing material tying him to this district, or this state
23 beyond his half interest in the Clifton Park, New York real
24 estate. On the other hand, defendant appears to have access
25 to enormous financial resources contributed by third parties.

1 According to the government, these resources include millions
2 of dollars as well as access to private air travel and to a
3 third party's private island in Fiji. Defendant himself
4 proposes that he should be subject to home detention,
5 monitored by armed guards at the cost of at least \$40,000, and
6 possibly more like \$140,000 per month, to be paid through a
7 special trust funded by third-party contributors. This access
8 to third parties' extensive financial resources exacerbates
9 the Court's concern that the defendant might attempt to
10 abscond if given the opportunity to do so.

11 Nor do defendant's proposed conditions of release
12 cure these concerns. Defendant proposes release on a
13 \$10 million bond, but this Court views this bond as basically
14 worthless, in light of defendant's lack of personal assets.
15 To cure this defect, defendant proposes that he should be
16 monitored by armed guards. At this point, however, the Court
17 is not satisfied that the armed guard condition is a
18 reasonable alternative to pretrial detention.

19 First, the Court does not yet understand how
20 defendant intends to pay for the cost of private security.
21 The defendant cryptically avers that the guards will be paid,
22 quote, by an irrevocable trust funded by third-party
23 contributors to pay for reasonable defense costs in connection
24 with the instant prosecution, end quote. What the Court does
25 not have in front of it, however, is any information about the

1 trust; its detailed terms; its corpus; or its settlors.
2 Without such information, the Court cannot make a reasoned
3 assessment of the armed guards' ability to assure defendant's
4 appearance.

5 The Court, likewise, has in number of questions
6 about who would be guarding the defendant and their ability to
7 prevent him from fleeing. How, for example, was TorchStone
8 selected as the proposed security company? Who does
9 TorchStone employ as guards, and what sort of background check
10 and security screenings are these guards subject to? While
11 the Court has no intention of impugning TorchStone's or its
12 employees' integrity by asking these questions, it is
13 concerned that without a great deal more of information it
14 cannot make an informed assessment of these guards' ability to
15 prevent the defendant from fleeing.

16 And I might add, that the Court really isn't in a
17 position to be assessing law enforcement techniques and the
18 qualifications of law enforcement officers. We have law
19 enforcement officers who work for the government and, with all
20 due respect to retired law enforcement officers, I don't think
21 that it's the job of the Court to be micromanaging the
22 activities of law enforcement or replacements for law
23 enforcement. And this is particularly true here where the
24 defendant may have both access to extraordinary financial
25 resources and a number of loyal adherents, which could easily

1 facilitate his escape at some point.

2 For the aforementioned reasons, the Court concludes
3 that the proposed conditions of release are insufficient to
4 reasonably assure the defendant's appearance at trial. The
5 Court therefore denies the defendant's motion for bail. This
6 denial is, however, without prejudice to the refiling of a
7 revised bail package that provides greater transparency about
8 the defendant's access to financial resources and the proposed
9 terms of his home detention and armed guards. Because the
10 Court determines that the government has shown that these
11 conditions are insufficient to reasonably assure the
12 defendant's appearance, the Court need not consider at this
13 time whether the government also has shown that these
14 conditions are insufficient to protect the community and
15 others.

16 So the application is denied without prejudice. And
17 you understand what the concerns of the Court are.

18 MR. AGNIFILO: Very much so, thank you.

19 THE COURT: All right. Is there anything else from
20 the government today?

21 MS. PENZA: No, Your Honor, thank you.

22 THE COURT: All right.

23 Now with respect to the government, if for any
24 reason we require a meeting before, I think it's the 25th --

25 MS. PENZA: Yes, Your Honor.

1 THE COURT: -- of July, please give adequate notice
2 to both of the defendants, because I'm requiring that the
3 defendants appear including Ms. Mack at every status
4 conference.

5 MS. PENZA: Understood, Your Honor.

6 THE COURT: All right.

7 MS. PENZA: Thank you.

8 THE COURT: That's your obligation to keep them
9 informed so that they can give Ms. Mack adequate time to get
10 here, because that's the requirement of this Court in this
11 very significant case.

12 MS. PENZA: Absolutely, Your Honor.

13 THE COURT: Got it?

14 MS. PENZA: Yes.

15 THE COURT: Is there anything else from you, sir?

16 MR. BUCKLEY: No, thank you, Your Honor.

17 THE COURT: Anything else from you, sir?

18 MR. AGNIFILO: No, thank you, Your Honor.

19 THE COURT: All right. We're adjourned.

20 (Matter concluded.)

21 * * * *

22 I certify that the foregoing is a correct transcript from the
23 record of proceedings in the above-entitled matter.

24 s/ Georgette K. Betts June 13, 2018

25 GEORGETTE K. BETTS DATE